

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KATHERINE T.

Claimant,

vs.

NORTH BAY REGIONAL CENTER

Service Agency.

OAH No. N 2006100824

DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on November 27, 2006, in Napa, California.

Marilyn Halloran, Adult Services Supervisor, represented the service agency North Bay Regional Center (NBRC).

Claimant Katherine T. was represented by her parents Michael and Edwina T.

The matter was submitted on November 27, 2006.

ISSUE

Whether NBRC must reimburse claimant's parents an additional \$2,355.05 for expenses incurred between June 1, 2006, and June 15, 2006, to obtain services for claimant pursuant to a self-determination agreement.

FACTUAL FINDINGS

1. Katherine T. (claimant) is a 24-year-old female born May 27, 1982. She is eligible for and receives regional center services based on a diagnosis of autism.

2. Claimant currently lives in her own apartment in Ventura, California, with 24 hour supervision. She has lived in Ventura since June 16, 2006. Prior to moving to Ventura claimant resided in the family home in Napa, California with her parents.

3. Claimant is generally described as High Functioning Autistic. However, she has demonstrated an inability to independently cope with the practical and social aspects of life. She has severe problems relating to others beyond a superficial level, and does not understand the concept of personal space. She will say inappropriate things at inappropriate times. And she has repeatedly engaged in self-injurious and high-risk behaviors, including running away, accepting rides from strangers, soliciting men for sex right after meeting them and attempting suicide.

4. Claimant has had several unsuccessful residential placements. Following her last unsuccessful placement in 2001 claimant returned to live with her parents in Napa. On March 21, 2001, claimant's parents and NBRC signed a "Self-Determination Agreement." Pursuant to the agreement, NBRC vendored claimant's parents to provide services to claimant, a practice known as the "self-determination" model. The agreement generally sets forth the purpose of the agreement and the types of services claimants' parents are expected to secure on her behalf. It provides in pertinent part:

The objective of these services is to enable [claimant] to safely participate in the mainstream of community life and to achieve academic goals commensurate with her potential. It is anticipated that this will include high school graduation and attendance at a junior or four year college if she wishes. The long-range goals are independent living, work, and social interaction in the community.

In order to achieve her goals [claimant] will need comprehensive behavior services, counseling, periodic assessment and intervention by various clinical specialists and structured opportunities to identify and interact with persons with similar disabilities, in particular those who are successfully participating in the mainstream of society. [Claimant's parents] will select, purchase, and supervise these services within the parameters of the service authorization from [NBRC]. At the beginning of each authorization period [claimant's parents] will prepare a service plan and proposed budget and submit it to NBRC. Once mutually agreed upon[,] appropriately trained and licensed persons or agencies will provide these services. Fiscal billing records and receipts will be submitted monthly after services are provided. NBRC will then reimburse for actual services costs as outlined in this agreement.

The exact nature of the services to be paid for was not set forth in the agreement. However, Individual Program Plan (IPP) documents and addendums identify the services as: "administrative costs, mentors, conferences and meetings, Vine Village [a day program] attendance, camp attendance, and medical appointments."

5. Under the self-determination plan, claimant's parents paid for services out of family funds and were reimbursed by NBRC following submission of a detailed accounting of expenses the following month. NBRC reimbursed claimant's parents up to \$4,800 a month.

The standard practice was for NBRC to provide claimant's parents with an Authorization for Purchase of Services for up to \$4,800 immediately prior to the month in which the expenses would be incurred. Claimant's parents would secure services for claimant for the month covered by the authorization and would then submit an itemized accounting of the amounts of each expenditure, date, means of payment, area of expenditure [activities, administration, medical, meetings and mentor] and all receipts by the 5th of the following month.

6. Claimant's mother assumed primary responsibility for administration of the self-determination plan. The majority of the funding was used to pay mentors, hired and trained by Claimant's mother, to be with Claimant whenever she was not supervised by family members. In addition, the plan paid for therapy with Dr. O'Shea, art classes and supplies, medical and dental bills not covered by Medi-Cal, trips to conferences where Claimant has spoken and other social opportunities for Claimant.

Under the plan, claimant's parents have also been reimbursed for restaurant meals and trips to have special coffee, and even cash payments to claimant that they have used as rewards and reinforcements for desired behavior. For example, Claimant's mother has been able to persuade Claimant to go to appointments that she did not want to go to by going out to lunch or to get coffee afterwards.

7. Although claimant's placement with her family seemed to work relatively well, claimant's goal since at least 2003, developed through the IPP process, has been to live independently of her family in a supported living arrangement. When a local Napa program could not be located to provide a supported living plan (SLP) for claimant, claimant's parents requested that NBRC fund an SLP by the Institute for Applied Behavior Analysis (IABA). Claimant's parents paid for the IABA SLP initially, but were reimbursed by NBRC. The IABA SLP provided for claimant to live alone in her own one bedroom apartment in Ventura, with 24 hour supervision. The monthly cost of the program was estimated at \$15,000.

8. NBRC rejected the IABA SLP on the grounds the cost of the plan was shockingly expensive, NBRC had not been part of the development of the plan, and the plan was not cost effective. NBRC also notified claimant that it would no longer fund the self-determination plan.

9. The matter proceeded to fair hearing before Administrative Law Judge Mary-Margaret Anderson. Judge Anderson found that the IABA SLP was an appropriate plan for claimant, that claimant had waited approximately three years for a supported living

arrangement, and that given the exhaustive, yet unsuccessful search that had already been conducted, there was no reason to believe that a less costly plan could be found that would meet her needs. Judge Anderson ordered NBRC to fund the IABA supported living plan, and further ordered that “the self-determination plan agreement remain in effect pending implementation of the IABA plan, provided, however, that both parties comply will all of the terms and conditions set forth in the agreement.” The parties were directed to convene an interdisciplinary (ID) team meeting forthwith to implement the IABA plan and clarify the responsibilities of each party under the self-determination plan. The decision issued on March 21, 2006, and was not appealed. It is now final.

10. NBRC continued to fund the self- determination plan pending implementation of the IABA SLP. Claimant’s parents received an Authorization for Purchase of Services for up to \$4,800 for the period from April 1, 2006, to April 30, 2006. The authorization was dated March 29, 2006, and signed March 30, 2006. On or before May 5, 2006, claimant’s parents submitted a payment request for \$4,787.16 for expenses incurred on claimant’s behalf in April 2006.

11. On May 11, 2006, the ID team held an individual plan program (IPP) meeting pursuant to Judge Anderson’s order. At the meeting, Daniel Baldwin introduced himself as claimant’s new client program coordinator (CPC). Baldwin questioned the expenses submitted by claimant’s parents for April 2006. Baldwin’s case notes indicate the April billings were discussed because the submitted receipts totaled \$2,310.11 but claimant’s parents had billed for \$4,795.64. Baldwin noted that he requested additional receipts or cancelled checks for the remainder, which appeared to upset claimant’s father. Baldwin also noted that he questioned the types of expenses for which claimant’s parents were billing. Baldwin questioned purchases at Embassy Suites, Capistranos Restaurant, Alamo Car Rental, etc. and asked why more economical reinforcers could not be used for claimant. He also questioned billings for claimant’s mentors (family friends), which included payment for the mentors’ services, entertainment, food and beverages, travel, lodging and fuel. Baldwin’s notes indicate that he did not receive a response to his questions, and that his questions seemed to upset claimant’s family, who requested a new CPC after the meeting.

12. Implementation of the IABA plan was also discussed at the May 11, 2006, IPP meeting. An addendum to claimant’s IPP was drafted, which set forth the services to be provided by NBRC, including funding of IABA supported living services 24 hours per day 7 days a week at the rate of up to \$13,985.96 per month from June 15, 2006, to December 31, 2006, transition funding of 40 hours at \$23.69 per hour from June 1, 2006 through June 15, 2006, and a \$700 per month rent subsidy.¹ The IPP Addendum also provided, “Parent Coordinated behavioral services provided by [claimant’s parents] will be funded by NBRC up to 4800.00 per mo. 5/1/06 through 6/15/06. Receipts will be requested for these services.” Claimant’s parents returned the signed IPP on June 9, 2006.

¹ Claimant is currently living in Ventura pursuant to the IABA SLP.

13. On June 4, 2006, claimant's parents received a new Authorization for Purchase of Services for the month of April dated May 31, 2006, and signed June 2, 2006. The new authorization was for \$2,310.11. Claimant's parents were told they had not properly submitted their April Purchase of Services, even though they followed the same procedure they had followed for the past five years. Claimant's parents inquired regarding the reduced amount of the Authorization to Purchase and were told it was a mistake.

14. Claimant's parents resubmitted their April expenditures (\$4,787.16) with their May (\$4,772.49) and June (\$4,710.11) expenditures in person on July 3, 2006. They included additional supporting documentation (i.e., receipts, credit card statements and checking account statements to correlate with receipts for expenditures, and copies of cancelled checks) with the submittals. Prior to this submittal neither credit card statements nor cancelled checks were required for reimbursement.

15. On July 3, 2006, (the same day claimant's parents submitted requests for reimbursement for April, May and June) claimant's parents received an Authorization for Purchase of Services dated June 22, 2006, and signed June 26, 2006, in the mail. The authorization was for the period of May 1, 2006, through June 15, 2006, for expenditures of up to \$4,800 per month. However, the authorization also contained the following notation: "Itemized receipts due w/billing June '06 = \$2,400.00." Claimant's parents claim that prior to receipt of the authorization on July 3, 2006, they had never been advised that NBRC would only pay \$2,400 for expenses incurred on claimant's behalf through June 15, 2006.² Claimant's parents testified that they had already incurred almost \$4,800 in expenses under the self-determination plan by June 15, 2006, because in addition to claimant's normal expenditures, they had to assist claimant prepare for and move to Ventura.

In August 2006, claimant's parents received full reimbursement for expenses incurred in April and May, but only received reimbursement for half the month of June, i.e., \$2,355.06. On August 17, 2006, claimant's parents requested payment of the balance of the money requested for expenses incurred on claimant's behalf in June 2006.

16. NBRC does not contend that claimant's parents spent less than the requested amount. Instead, it contends that it is clear from the IPP that NBRC only intended to pay half of the \$4,800 monthly self-determination allocation because NBRC was to begin paying for the IABA SLP on June 15, 2006, i.e., half way through June. NBRC also notes that the expenses for which reimbursement is sought include a number of expensive items, such as meals and lodging at places like Embassy Suites, which it contends does not really comply with the original agreement or Judge Anderson's decision. Alternatively, NBRC requests

² CPC case notes for June 15, 2006, indicate claimant's parents may have been advised during a telephone conversation on that date that expenses for June would be prorated for half the total since the IABA purchase would start on June 15, 2006. However, even if claimant's parents were orally advised on June 15, 2006, of the reduction, this notification was after claimant's parents had already incurred sums in excess of the reduced amount.

that if it is required to pay the additional amount requested by claimant's parents, that it be given a credit for the 40 hours it paid to IABA to facilitate claimant's move to Ventura.

17. Claimant's parents contend that they have provided the necessary documentation of expenses and are simply asking for payment for expenditures that NBRC committed to reimburse. They point out that with the exception of expenses associated with claimant's move to Ventura, the expenses for which they requested reimbursement are the same type of expenses for which they had been reimbursed in the past. With respect to the expenses related to claimant's move to Ventura, claimant's mother testified that they stayed with claimant one night in Ventura because there was no single staff available to stay with claimant and they felt they were authorized to spend self-determination funds. It is the position of claimant's parents that they should be fully reimbursed because NBRC failed to timely notify them that it planned to prorate the amount payable under the self-determination plan for June 2006, and they acted reasonably in expending nearly that amount prior to June 15, 2006. Claimant's parents request that they be paid \$2,355.05, which represents the balance of the \$4710.11 expended under the self-determination plan in June 2006.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Service Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.),³ the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)). The State agency charged with implementing the Lanterman Act is the Department of Developmental Services (DDS). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4620.)

2. In order to determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote as normal a life as possible. (§ 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), and reflect the client's particular desires and preferences. (§ 4646; § 4646.5, subds. (a)(1), (a)(2) and (a)(4); § 4512(b); § 4648, subd. (a)(6)(E).) Services that may be provided pursuant to the IPP include, but are not limited to, diagnosis, evaluation, treatment, special living arrangements, education, mental health services, counseling, assistance in locating a home, parental training, behavior training and behavior modification programs, community integration services, short-term out-of-home care, supported living arrangements,

³ All citations are to the Welfare and Institutions Code unless otherwise indicated.

occupational and speech therapy, daily living skills training, social skills training, and emergency and crisis intervention services. (§ 4512, subd. (b).)

3. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not mandated to provide all the services a consumer may require, and a regional center has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b) & 4651; and see *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

4. In the subject case, pursuant to a March 21, 2006, order by Judge Anderson, the parties were required to continue operating under a March 2001 self-determination plan pending implementation of an IABA supported living plan. Under the self-determination plan NBRC paid up to \$4,800 per month for expenses covered by the plan. Nothing in the plan required that the \$4,800 be spent at any particular time of month. In an IPP amendment signed in early June 2006, the parties agreed NBRC would begin funding the IABA plan on June 15, 2006. Claimant's parents, in reliance on past practice, as well as a statement in the IPP amendment that parent coordinated services provided by them would be funded by NBRC up to \$4,800 per month through June 15, 2006, spent \$4,710.11 by June 15, 2006. Claimant's parents were never notified prior to June 15, 2006, that NBRC would only fund \$2,400 under the self-determination plan for June 2006. Claimant's parents were paid \$2,355.06 by NBRC for June 2006. They request that NBRC be required to pay them the additional sum of \$2,355.05, which represents the balance for expenses incurred in June 2006.

The request of claimant's parents is reasonable. The services for which they seek reimbursement are the type of services authorized by the Lanterman Act (e.g., locating a home, special living arrangements, social skills training) and for which NBRC has provided reimbursement in the past. In addition, claimant's parents were operating based on past practice and the express provisions of a written agreement (the IPP amendment), which authorized payment of \$4,800 a month through June 15. And they were not given prior notice of any proposed reduction in payment so that they could adjust their spending. It would therefore be unfair to permit a unilateral, retroactive adjustment in the amount that was reimbursable under the self-determination plan. Accordingly, it is determined that claimant's parents should be reimbursed the requested amount of \$2,355.05.

NBRC requests that it be given a credit for the 40 hours it paid to IABA to facilitate claimant's move to Ventura. This request is denied since payment was made to IABA and not to claimant's parents.

ORDER

The appeal of claimant Katherine T. is granted. NBRC shall reimburse claimant's parents the sum of \$2,355.05 for parent coordinated services obtained on claimant's behalf between June 1, 2006, and June 15, 2006.

DATED: _____

CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal to a court of competent jurisdiction within 90 days.